Best Practices in the Acquisition and Use of Independent Medical Evaluations:

A Synthesis of Recommended Practices from
A Review of Pertinent Literature
And Interviews with Executives at Selected Organizations

Compared to

Current Practices
At the Washington State Department of Labor & Industries

Chapter 3

Downloadable Version, Part 1 of 3

Originally submitted as Deliverable 6
Project to Improve Independent Medical Examinations
For the State of Washington
Department of Labor and Industries

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Introduction

The Washington State Department of Labor and Industries retained Med-Fx, LLC to identify the best practices in the process, content, and quality of independent medical examinations (IMEs). The project is the basis for improving the quality of IMEs the department obtains for use in claims adjudication.

IMEs are used to provide information and opinions for the understanding and guidance of causality analysis, diagnosis, medical testing and therapy, functional recovery programs and permanent disability awards. To be most effective in these areas, an IME must be complete, focused, rigorously and clearly reasoned, impartial, and supply the information needed by the person who requested it. If performed and reported with high quality and with respect and consideration for the examinee, IMEs are a necessary and useful form of information gathering.

The term "best practices" is derived from formal benchmarking studies. Benchmarking is used in industry to mean a process that begins with identifying measurably best results and then leads to identifying and measuring the relative contribution of the specific actions that lead to these better results. Ideally, relatively formal measurements and studies are used to determine such best practices. In speaking with industry leaders, no private firm or state regulatory body had conducted, or could identify, formal or published studies that quantitatively and comparatively linked specific practices in the use of independent medical examinations (or examination content), either in workers' compensation or similar forms of insurance, to outcomes of the claims process. It appears that neither the industry nor those who study it have mapped or measured information collection and management practices and compared them on the basis of costs, functional recovery, return-to-work outcomes, or legal results. Therefore, "best practices," as used here, means those practices identified by consensus or expert opinion

that should lead to better outcomes, not practices proven to do so in controlled studies. They can be thought of as "practices that promote effective results." The best practices reported here should be considered "building blocks" in a chain of events that should result in fair and efficient care and functional recovery.

The Legal Foundation for Current IME Practices in Washington

A number of statutes and regulations form the legal foundation for current IME practices in Washington. There are also statutes and regulations pertaining to medical services and medical records in general, as well as fees. We conclude that these statutory and regulatory provisions are not dramatically different from those of other states. The legal context for IMEs in Washington is reviewed in more detail in Deliverable 2 of this project.

Permissive language in the Washington workers' compensation statutes allows, but does not mandate, the Department or a self-insured employer to require an injured worker to undergo an independent (special) medical examination (RCW 51.32.055(4)). Once the Department has requested an examination or evaluation, the worker has an affirmative duty to appear for the evaluation (RCW 51.32.110), (RCW 51.36.070).

Where a dispute arises from the handling of any claim before the condition of the injured worker becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion.

WAC 296-14-400 states that case closure on a medical basis requires advice from a health professional, but does not state that an independent or special examination is required.

WAC 296-23-255 contains a list of reasons why IMEs may be requested by the Department, self-insurers, or attending physicians. It includes establishing a diagnosis

where the prior diagnoses were ill-defined or controversial; outlining a treatment program if treatment or progress is controversial; establishing causation; determining aggravation of a pre-existing condition; to determine MMI; to rate permanent impairment; and to determine the basis for reopening a case. Other than determining MMI and ratings, the reasons for obtaining IMEs appear to be related to controversial or unclear prior information.

The Washington legislature has passed laws (RCWs) mandating the Department to develop standards for:

- the conduct of special medical exams,
- content of the exam reports,
- qualifications of persons conducting the exams, and
- maintaining the quality and objectivity of exams.

The department has adopted rules (WAC) to implement these legislative mandates.

Conduct of IMEs

According to a state Attorney General's opinion, the Director has broad authority to establish standards for the conduct of medical examinations (opinion 94-18, interpreting RCW 51.32.112 (1)). Pursuant to this Code provision, WAC 296-20-210 lists "…general rules establish[ing] a uniform standard for conducting examinations and submitting reports of examinations. These general rules must be followed by doctors who make examinations or evaluations of permanent bodily impairment."

Content of IMEs

WAC 296-20-210 also contains a list of contents for IMEs. The list includes the complete history of past injuries and diseases; the complaints; the age, sex, height and weight; x-ray findings and diagnostic tests made or reviewed in connection with the examination; the diagnosis; and all findings, including negative findings.

A later WAC, 296-23-260, lists required content for IME reports. This list calls for a detailed chronology of the injury, the mechanism, past studies and treatments. It also includes causality, all diagnoses (sorted into categories), answers to questions, conclusions, and a summary of the objective findings supporting the conclusions. There are no requirements to explain the rationale/logic of recommendations, ratings, or conclusions, although it could be implied from the requirement for a summary. There appears to be no specific requirement for a critical analysis of prior diagnoses, tests, treatment or absence from work. Also missing is a requirement for occupational history and job descriptions.

WAC 296-20-200 mandates the use of the category rating system for bodily impairment. WAC 296-20-220 describes this system, which is unique to Washington.

Qualifications of Persons Conducting the Exams

WAC 296-20-210 also lists administrative rules governing who can perform examinations. "Examinations for the determination of the extent of permanent bodily impairment shall be made only by doctors currently licensed in medicine and surgery (including osteopathic and podiatric) or dentistry, and department-approved chiropractors. A chiropractic evaluation of permanent impairment may be performed only where the worker has been clinically managed by a chiropractor."

Quality Management

The Department has the responsibility to monitor the quality and objectivity of medical examinations pursuant to RCW 51.32.114. This responsibility includes credentialing and implies affirmative review of reports as well as the IME process.

<u>The Survey of Industry Participants</u>

The survey of industry participants revealed a general consensus that the workers' compensation system experiences too much conflict and is adversarial, interfering with

the original intent of the laws and creating barriers to prompt, effective care and functional recovery. The survey participants believe that it is important to reduce conflict within the bounds of medical necessity and fiscal prudence. The focus should be on securing efficient, effective care for workers with work-related health problems and on facilitating functional recovery to minimize the economic impact of the occupational injury or illness.

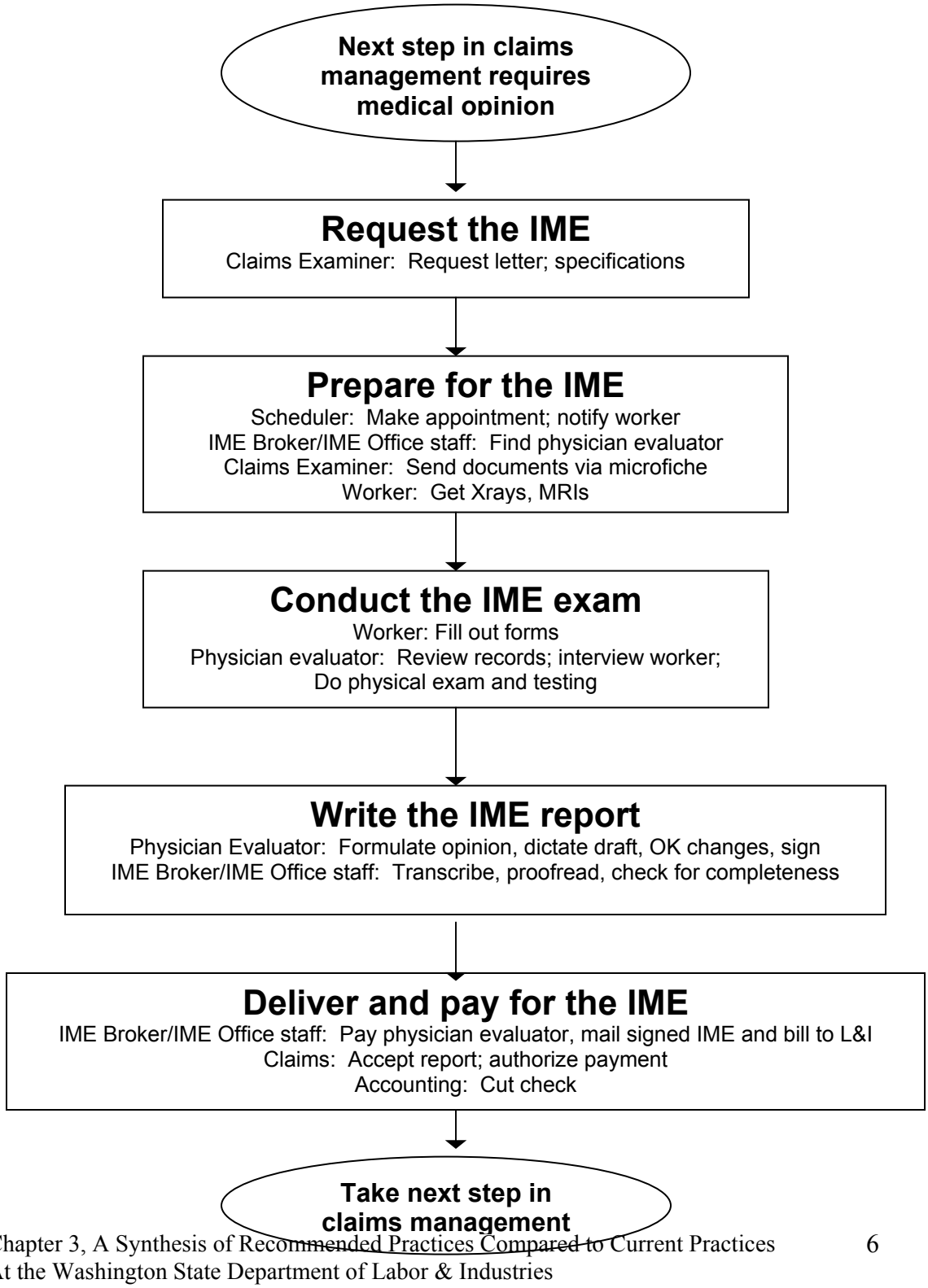
Scope of Deliverable 6

Deliverable 6 of the IME Improvement Project presents the synthesis of multiple structured interviews with senior claims officials, medical directors and state regulators to determine consensus best practices in the performance of IMEs. It also includes the results of a search and analysis of the peer-reviewed medical, legal, and economic literature as well as insurance and trade materials to identify "best practices" in the use, management, performance and reporting of independent medical examinations. After identifying consensus best practices, we contrast those practices with observations of the current IME program at L&I to develop an analysis of the differences. Following the comparison of practices is a listing of the issues surrounding the current process that may give rise to opportunities for improvement.

Deliverable 7 includes a prioritized set of practices that could feasibly be implemented by the Department of Labor and Industries to close the gap between current and best practices.

An Overview of the IME Process

The following is a summary representation of the IME process:



This table summarizes the current process steps in an IME and the significant recent quality management initiatives completed by the Department of Labor & Industries

STEP	WHAT/WHO	CURRENT PROCESS	CURRENT / RECENT QUALITY MANAGEMENT ACTIVITIES
1	**Request IME**		
	Claim Manager	Fills out IME dictation worksheet - Prepares claims summary - Specifies purpose of exam - Specifies timing /priority status - Selects questions to ask examiner - Specifies preferred type / name of examiner Creates final request letter; sends to scheduler Sends letter to injured worker re: notice of intent to schedule an IME	In fall of 1998, claim managers were trained on scheduling procedures and when to ask APs for an impairment rating and when to ask for an IME. Claim manager chooses from menu of standardized questions
2	**Prepare for IME**		
2a	Scheduler schedules appointment	Calls IME Broker or potential physician evaluators to find appointment slot Writes / mails letter to injured worker re: appointment date If needed, renegotiates times with examiner and IW and re-sends notification letter	Selects examiner from Approved Examiners list (providers must apply). List currently has about 700 doctors and 29 IME brokers. L&I has reduced the time it takes to schedule an IME by approx. 2 weeks by sending the IME assignment electronically to the service location for scheduling.

STEP	WHAT/WHO	CURRENT PROCESS	CURRENT / RECENT QUALITY MANAGEMENT ACTIVITIES
2b	Claim Manager Injured Worker	Requests a microfiche copy of the claims file be sent to the physician evaluator Gets copies of Xrays/MRI's etc. Calls medical office to request copy for pick up Waits several days Goes to medical office to pick up records	
3	**Perform IME**		
3a	IME Broker / Medical office staff	Assembles chart for physician-evaluator	
3b	Injured Worker	Fills out questionnaires and history forms	
3c	Physician-evaluator	Does the history and physical - Reads documents supplied - Interviews injured worker - Performs physical examination - Does tests, measurements - If needed, obtains additional records or tests	L&I has published and regularly updated the Medical Examiners' Handbook since 1990. The handbook contains information about conducting IMEs, content of reports, how to rate impairment and other information. L&I conducted the Reapplication Project in 2000 that required all providers to reapply and be certified for inclusion on the Approved Examiners List

STEP	WHAT/WHO	CURRENT PROCESS	CURRENT / RECENT QUALITY MANAGEMENT ACTIVITIES
4	**Prepare IME Report**		
4a	Physician-evaluator	Dictates draft report - Document process and factual findings of the examination - Draws conclusions/formulates opinions - States and explains basis for findings - Answers questions and lays out rationale	See 3c above. Template for impairment rating reports posted on L&I website Seminars for physicians on IMEs and/or impairment rating have been offered in 1994, 1996, 1998, and 2000. Chiropractors can be approved to do impairment ratings by attending an L&I sponsored training seminar (offered biannually since 1994)
4b	IME Broker / Medical Office staff	Transcribes report Proofreads; makes sure all questions are answered; marks up draft report as necessary. Sends edited report or proposed changes to physician-evaluator for approval Generally combine multi-specialty / examiner materials without synthesis	See 3c above.
4c	Physician-evaluator	OKs proposed changes; answer questions	
4d	IME Broker / Medical Office staff	Prepares final hard-copy report Sends to physician-evaluator for signature	

STEP	WHAT/WHO	CURRENT PROCESS	CURRENT / RECENT QUALITY MANAGEMENT ACTIVITIES
5	**Delivery and Payment**		
5a	IME Broker / Medical Office staff	Sends preview draft to L&I for review	
5b	Physician-evaluator	Signs hard copy of report	
5c	IME Broker / Medical Office staff	Mails signed hard copy to L&I claims office Sends bill to L&I accounting department	In 1999, Tucker Allan, a research firm, completed a review of the IME fee structure and made suggestions for improvement.
5d	Claim Manager	Reviews report; determines adequacy If needed, asks for clarification (written addendum) from examiner If needed, refers complaints to Provider Review & Education unit for follow-up Authorizes (or refuses) payment Takes claims management action as appropriate	See 5c above The Department monitors complaints from workers and claims managers on conduct and quality of exams. Problems are referred to the Provider Review and Education Unit, which communicates with providers or IME brokers about problem patterns. Disciplinary actions have included: (a) removal of a few doctors from the Approved Examiners List based on action taken by the Medical Quality Assurance Commission at the Department of Health, (b) putting a few doctors on probation for their conduct, and (c) removal of 3 doctors due to excessive workers' complaints.

Definitions

Independent Medical Examination

An independent medical examination (IME) is an evaluation of medical issues by a health professional who is not involved in the care of the evaluee, and who has no interest in the outcome of the evaluation.[1] An IME is, by definition, "impartial, unbiased, and objective." There is no physician-patient relationship, and no physician-patient privilege. There is also no physician-employer nor is there a physician-insurer relationship. According to the literature reviewed, independent medical examinations are intended to provide specific, relevant and impartial information to guide adjudication of a workers' compensation claim.

While these evaluations are often called independent medical examinations, technically they are more inclusive than a simple physical examination because of the detailed record review, interview, and analysis often involved. For purposes of this report, we use the term "independent medical examination" generically to describe any evaluation or examination done by a physician on behalf of an interested third party, and it can be used interchangeably with any and all of the terms described below.

A Note on Statutory and Regulatory Terminology

In different states, similar examinations are called by different names, and similar names are used to describe a variety of examinations. "Impartial" is the term more often used for examinations ordered by a court, a hearing examiner or an administrative law judge, while "independent medical exam" can refer to examinations ordered by a hearing examiner, or a party to an adversarial proceeding, whether an employee, an employer or

[1] Colorado and Oklahoma do allow the insurer to request the IME examiner to take over as treating physician after the examination.

an insurer. "Independent" also is used to describe retained experts whose function is to advise their client -- a claims adjudicator or a hearing examiner --about the quality and adequacy of medical evidence. Other terms in use include "expert," "required," "agreed," "qualified," "insurance" and "adversarial" medical examinations.

Terminology was mentioned as an issue for some parties. Worker advocates do not believe that the evaluations are independent, as someone they perceive to be "defending" a claim often orders the examination.

Quality

The participants in the benchmarking comparison define quality in an IME as an unbiased opinion that clearly and understandably answers the questions posed to the person requesting the evaluation. A second attribute of a quality IME is the readability of the report. Since most requestors of IMEs are not medically trained, readability includes an appropriate language level as well as a logical flow. Understandability and readability in this context also imply a clear explanation of the logic used to reach conclusions about the issues in question. The evaluator cannot assume that the reader will have detailed knowledge of anatomy, physiology, and pathology, the implications thereof on health and ability to work, or knowledge of the medical evidence base.

Another dimension of quality in IMEs noted by regulators and administrative law judges is that they be supportable in court. In order to be useful in legal proceedings, IMEs should clearly explain the logic used to reach the conclusions stated. Citing appropriate, peer-reviewed supporting evidence from the medical literature was felt to be an attribute of quality.

Panel

This term is used to describe four different concepts:

(1) A small group of examiners that simultaneously conduct a single independent medical examination of a claimant. In this report, this will be called "a panel."

(2) A company that arranges or brokers IMEs. These companies commonly arrange examinations by single providers and panels (see #1), and manage other administrative details of the process. In this report, this is referred to as an "IME broker."

(3) A short list of names of potential examiners (most commonly three names). Most commonly, one party nominates the short list and another party selects the examiner. In this report, this will be generally be called a "short list" of candidate examiners.

(4) A centralized list of all physicians who are willing to serve as IME examiners and have been qualified, certified, or otherwise found eligible to serve as IMEs. The States of California, Washington, New York, and Colorado, for example, maintain lists of eligible physicians. In this report, this will be called a "list of eligible examiners."

IME Broker

In this report, a company that arranges or brokers IMEs is referred to as an "IME broker." These companies commonly arrange examinations by single providers and panels. They may cull and organize records, and perform elementary quality review of reports as well. They may also have contractual relationships with the examiners that include billing and payment arrangements.

Methodology

The benchmarking study (Deliverables 3 and 5) consists of structured telephone interviews of medical directors and senior claims officials at well-regarded insurers and self-insured employers, and officials at comparison state workers' compensation departments. Participants were identified in collaboration with L&I. Participants included four of the five largest national workers' compensation carriers, two carrier/TPA organizations in the western United States, four large state funds, and two of the largest third party administrators in Washington. We also spoke with risk or claims managers at four large self-insured companies in Washington. Industries represented either directly in the interviews or indirectly through representative claims organizations, included aerospace, software, retail clothing, retail food, municipal and county governments, school systems, airlines, utilities, construction, and healthcare.

Also included were regulators in states reported to have relatively low rates of IME use, relatively high cooperation by attending physicians, low IME-related costs, or that were believed by industry experts to be good models for dispute resolution or IME quality management systems. We interpreted low rates of IME use as a possible indicator of success at acquiring information by other means. These states were California, Colorado, Connecticut, Indiana, Kentucky, New Jersey, Texas, and Wisconsin. Finally, we interviewed experts familiar with the workers' compensation systems in Canada, Australia and New Zealand, which have considerable similarity to those in the U.S.

The study was a survey of opinion to obtain consensus on best practices rather than a formal benchmarking exercise involving extensive observation and data collection. Consequently, no outcome data was collected. Further, no participant had collected comparative data available from internal or external benchmarking studies. Therefore, "best practices" as used here means those practices identified by consensus or expert opinion that should lead to better outcomes.

Med-Fx developed a telephone interview guide, with extensive input from L&I, to determine when IMEs are used to address specific issues, when they are obtained, who orders the IMEs, how the requests are framed, examiner choice, examiner qualifications, frequency of IMEs, legal constraints, definitions of quality, and costs. The interviews also covered the more general topic of the acquisition of medical information in the claim adjudication process. The guide was used as a starting point for discussions with the medical directors, senior claims officials, and others at participating firms and regulatory bodies.

For the literature search, summarized in Deliverable 4, the investigators used computerized, key-word searches for relevant peer-reviewed articles, books, trade articles and web sites. We searched the National Library of Medicine using its PubMed software. We searched the Lexis, Nexis, LoisLaw and Legal Information Institute databases, and used LawCrawler and FindLaw to identify relevant legal studies. We used search engines such as Google, Northern Light, and Yahoo to search economic literature, public policy, the trade literature and web pages.

When conventional search strategies failed to yield substantial numbers of quantitative studies, we contacted a number of knowledgeable industry participants to see if they were aware of proprietary materials or studies we had not found. We also contacted a number of publishers of insurance manuals and materials.